

A BILL TO BE ENTITLED

An Act creating the Texas State Board of Landscape Irrigation; defining the terms landscape irrigation system, component parts, landscape irrigator, any location, installation of underground sprinkler systems and/or landscape irrigation systems; Board; providing for exemption for certain persons in professions or other types of endeavor; creating a Board consisting of six members who shall be citizens of the United States and residents of Texas; prescribing qualifications for membership on the Board; providing method of appointment and prescribing term of office; defining a quorum of said Board; providing for and prescribing oath of office; prescribing powers and duties of the Board; authorizing the Board to adopt rules and regulations; providing for compensation and travel allowance; providing that no expense of administration of the Act shall ever be charged against the general fund of the State of Texas; prescribing qualifications for licensees; providing for examination and prescribing fees; prescribing for licenses and method of revocation and reissuance; providing for a grandfather clause; providing for notification to local boards of health; providing for a criminal penalty for one in violation of this Act to be fined the sum of \$100.00 and further providing that each day said violation continues shall be deemed a separate offense in violation of this Act; providing for an injunction in addition to the criminal penalty, enjoining anyone in violation of the Act; providing that cities and towns may prescribe rules and regulations; prescribing for appeal from Board Order; providing a saving and severability clause; repealing laws in conflict with a proviso; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This act shall be known and may be cited as the Landscape Irrigation Act of 1971.

DEFINITIONS

SECTION 2. The following terms as used hereinafter in this act shall have the following definitions:

A. "Landscape irrigation system" shall mean any assembly of component parts permanently installed with and for the controlled distribution of water for the purposes of irrigating any and all types of landscape vegetation, in any location, for dust reduction and for erosion control.

B. "Component parts" shall mean and refers to all types of sprinkler heads (except fire-type heads as used in buildings for the purpose of fire prevention and protection), all types of pipe and fittings, all types of manual and remote control valves; all types of automatic control; all low voltage wiring and/or tubing from control to section valves, hydrants, and any and all other such miscellaneous items as are required or may be required to provide a complete and operating installation for landscape irrigation.

C. A "landscape irrigator" shall be any person duly licensed by the State of Texas under this Act, who has and shall maintain a regular place of business, who, by himself, or themselves, or through a person or persons in their employ, sell, design, consult, install, revamp, alter, and maintain, assemble, repair, or service any landscape irrigation system and who designs, constructs or consults in or plans any landscape irrigation system which is designed, and its purpose is to irrigate any and all types of landscape vegetation, which shall include all types of ornamental grasses, trees, shrubbery, flowers, golf courses, ground cover, ornamental planting gardens and landscape nurseries which are permanently installed.

D. The term "in any location" refers to not only all exterior or outdoor locations but also includes interior planter boxes, courtyards, atriums, window boxes and rooftop gardens.

E. "Installation of underground sprinkler systems" and/or "landscape irrigation systems" shall mean, define and include complete and/or partial installation of all materials and appliances whatsoever, required to properly distribute water for the purpose of irrigating all types of vegetation, as hereinabove set out, and

specifically include the following:

1. Assembly, installation, repair, conversion, reconstruction, servicing and maintenance of landscape irrigation systems and their components and accessories.
2. All trenching, back filling, boring, holing, sleeving and the operation of all machinery or equipment necessary to accomplish these functions.
3. Hauling, handling, assembling and joining all components of a landscape irrigation system and the operation of all equipment necessary to accomplish these functions.
4. Removal, repair, restoration or replacement of permanent or temporary obstacles to the installation of a landscape irrigation system and the operation of all machinery and equipment necessary to accomplish these functions.
5. Preparation, repair and restoration of rights of way when such function is necessary to accomplish the installation, repair, reconstruction, service or maintenance of a landscape irrigation system, and the operation of all machinery and equipment necessary to accomplish such functions.
6. Connections to public, private or raw potable water supplies, the installation of back flow prevention devices and installation of service lines from source of supply to a landscape irrigation system.
7. Installation of automatic controllers and valves, including the establishment of electrical service from a fuse box, circuit breaker or receptacle to such controller, and the installation and connection of electrical control lines and/or tubing between controllers and remove valves.

8. Installation of pressure pumps, as components of a landscape irrigation system, their supports and housings and installation of electrical service from automatic controllers to such pressure pumps.

9. Construction, assembly and/or installation of water storage facilities for the purpose of supplying water to landscape irrigation system.

F. The word or term "Board" as used in this Act means the Texas State Board of Landscape Irrigation, hereinafter created.

EXEMPTIONS

SECTION 3. The following acts, work and conduct shall be expressly permitted without license:

A. Irrigation or yard sprinkler work done by a property owner in a building or on premises owned or occupied by him as his home;

B. Irrigation or yard sprinkler work done by anyone who is regularly employed as or acting as a maintenance man incidental to and in connection with the business in which he is employed or engaged, and who does not engage in the occupation of landscape irrigator or yard sprinkler contractor or maintenance for the general public; construction, installation and maintenance work done upon the premises or equipment of a railroad by an employee thereof who does not engage in the occupation of landscape irrigator or yard sprinkler construction or maintenance for the general public; and landscape irrigation and yard sprinkler construction or maintenance done by persons engaged by any public service company in the laying, maintenance and operation of its service lines or mains and the installation, alteration, adjustment, repair, removal and renovation of all types of appurtenances, equipment and appliances.

C. Any temporary or portable watering devices such as garden hose, hose sprinklers, soaker hoses and agricultural irrigation.

D. Commercial agricultural irrigation, portable or solid set.

E. Irrigation or yard sprinkler work or any other services authorized by this Act done by a licensed professional engineer as defined by the laws of this State.

TEXAS STATE BOARD
OF LANDSCAPE IRRIGATION

SECTION 4. There is hereby created the Texas State Board of Landscape Irrigation which shall consist of six members, each of whom shall be a citizen of the United States and a resident of this State. All members of the Board and their successors shall be appointed by the Governor and confirmed by the Senate, and shall hold office for terms of six years, or until their successors are appointed and have qualified; except the members of the Board first appointed shall hold office, two for 2 years, two for 4 years, and two for 6 years as determined by the Governor in making said appointments. In addition to the above qualifications, all appointments to this Board, the first appointments inclusive, and all subsequent appointments shall have as a prerequisite to their appointment the following qualifications:

Two members of the Board shall have had a minimum of 10 years experience as landscape irrigators, two members shall have had at least 8 years experience as landscape irrigators and two members shall have had at least 6 years experience as landscape irrigators.

SECTION 5. The Board shall administer the provisions of this Act. The Board shall formerly elect a Chairman and a Secretary-Treasurer from its members and may adopt such rules as it deems necessary for the orderly conduct of its affairs. The Board is hereby authorized and empowered to employ, promote and discharge such assistants and employees as it may

deem necessary to properly carry out the intent and purposes of this Act, and to fix and pay their compensation and salaries and to provide for their duties and the terms of their employment. A majority of the Board shall constitute a quorum for the transaction of business. The Board shall have a seal which shall be judicially noticed. The Board shall keep records of all proceedings and actions by and before the Board. The Board is hereby authorized, empowered and directed to prescribe, amend and enforce rules and regulations consistent with this Act for the examination and licensing of landscape irrigators and said Board shall for that purpose appoint an employee or employees thereof, with the power of removal, as a landscape irrigator examiner or examiners, whose duty shall be to examine, as to their fitness and qualifications, all persons applying to the Board for license to engage in the business, trade or calling of landscape irrigators or lawn sprinkler companies and to promptly certify the result thereof to said Texas State Board of Landscape Irrigation.

SECTION 6. Members of the Board shall not receive any fixed salary for their services, but each member shall be allowed for each and every day in attending the meetings of the Board, the sum of \$20.00, including time spent in travel to and from such meetings, and said members shall be allowed traveling and other necessary expenses while in the performance of official duty, to be evidenced by vouchers approved by the Chairman or Secretary of the Board; providing no member shall receive more than \$500.00 annually, exclusive of expenses. The members of the Board shall qualify by taking the Constitutional oath of office before an Officer authorized to administer oaths within this State, and, upon presentation of such oath of office, together with the certificate of their appointment, the Secretary of State shall issue commissions to them, which shall be evidence of their authority to act as such.

SECTION 7. All sums of money paid to the Board under the provisions of this Act, shall be deposited in the treasury of the State of Texas, and

placed in a special fund to be known as the "Texas State Board of Landscape Irrigation Fund". All expenditures for the administration and enforcement of this Act shall be in the amounts and for the purposes fixed by the general appropriation Bill. Provided, however, that no expense incurred under this Act shall ever be a charge against the general funds of the State of Texas.

SECTION 8. The Board shall issue licenses to such persons of good moral character as have, by a uniform, reasonable examination, shown themselves fit, competent and qualified to engage in the business, trade or calling of a landscape irrigator, designer or consultant, as the case may be.

SECTION 9. The Board shall have power to revoke any license issued hereunder if the same was obtained through error or fraud, or if the recipient thereof is shown to be incompetent or shall have willfully, negligently or arbitrarily violated municipal rules or ordinances regulating sanitation, drainage and plumbing; provided, however, that before any license shall be revoked, the holder hereof shall have written notice enumerating the charges against him, and shall be given a hearing by said Board, and have an opportunity to produce testimony in his behalf, at a time and place specified in said notice, which time shall be not less than twenty days after the service thereof. The Board shall have power to appoint, by an order in writing, any competent person to take testimony in such hearing, who shall have power to administer oaths, issue subpoenas and compel the attendance of witnesses, and the decision of the Board shall be based upon its examination of the testimony taken and the records produced. Any person whose license has been revoked may, after the expiration of two years from the date of such revocation, but not before, apply for a new license.

SECTION 10. All landscape irrigators and yard sprinkler construction firms or persons, as the case may be, in this State and presently acting in the capacity and doing business as a landscape irrigator or yard sprinkler construction firm, or person at the time this Act takes effect, may, within

180 days thereafter, procure a license as a landscape irrigator without examination, upon payment of the license fee hereinafter required. Every person applying after the expiration of said 180 days shall be required to take the examination herein provided for, and satisfy said Board as to his, her or their qualifications and competency.

SECTION 11. Licenses issued by the Board shall be valid throughout the State, but shall not be assignable or transferable. The Board shall forward to the local board of Health, if there be one, of each town, or to the other authority having control of the enforcement of regulations relative to the water supplies and plumbing in each town, the names and addresses of all persons in such town to whom such licenses have been granted. Licenses shall be issued for one year and may be renewed annually on or before October 1st upon payment of the required fee. In case of failure to renew a license as aforesaid on or before October 1st in any year, the person named therein may, upon payment of the said fee and a deferred renewal fee of \$150.00, increased by such additional fees as would have been payable had such license been continuously renewed, receive a deferred renewal thereof, which shall expire on the ensuing first day of October ; provided that such renewed license shall not constitute its holder a license for any period preceding its issue.

FEES

SECTION 12. The following shall be the maximum fees charged under this Act by the Board, to-wit:

Landscape Irrigators License - \$100.00

Renewal of Landscape Irrigators License - \$100.00

,Deferred Renewal Fee - \$150.00

SECTION 13. After the expiration of 180 days from the effective date of this Act, no person shall engage in, work at or conduct the business of landscape irrigation, or yard sprinkler construction or repairing in this

State, except as herein specifically exempted from the provisions of this Act, unless such person is the holder of a valid license as provided for by this Act; and after the expiration of 180 days from the effective date of this Act, it shall be unlawful for any person to engage in, work at, or conduct the business of a landscape irrigator unless such person is the holder of a valid license issued under the provisions of this Act and provided for hereby; and it shall be unlawful for any person, firm or corporation to engage in or work at the business of installing an irrigation or sprinkler system and doing such irrigation or sprinkler system work except as specifically herein provided unless such installation of irrigation and sprinkling system work be done under the supervision and control of a landscape irrigator licensed under this Act. Provided, however, nothing in this Act shall prohibit a corporation maintaining an established business at one or more locations in this State from engaging in the business or trade of selling, designing, repairing or servicing any landscape irrigation system or offering for sale or selling landscape irrigation systems and all or any materials, appliances or component parts thereof at retail, provided that such corporation shall employ a person licensed under this Act in one of such business locations.

CRIMINAL PENALTY

SECTION 14. Any person, firm, association of persons, corporation, partnership, designer or consultant engaged in, working at, or conducting the business of landscape irrigator or lawn sprinkler installer, as defined by this Act, without license as provided by law, shall be deemed guilty of a misdemeanor and upon conviction hereof shall be fined in any sum not to exceed \$100.00. Each day that said violation shall continue shall be deemed a separate offense in violation of this Act.

SECTION 15. Every city, town and village in this State may, by ordinance or by law, prescribe rules and regulations for the materials, construction, alteration and inspection of all pipes, faucets, tanks, valves and other

fixtures by or through which a supply of water is used or carried; and provide that they should not be placed in any building therein except in accordance with such rules and regulations; and shall further provide that no landscape, irrigation or yard sprinkling construction shall be done except in case of normal maintenance, repairs to damages or revisions, without a permit first being issued therefor upon such terms and conditions as said city, town or village shall prescribe.

INJUNCTION

SECTION 16.

A. In addition to the criminal penalty hereinabove set out, any person, firm, partnership, association, corporation, designer, planner or consultant who shall operate or hold himself, themselves, or itselfs out to be a landscape irrigator without first procuring such license as required and provided for in this Act, may be enjoined from unlawfully pursuing such business or occupation, and the Attorney General shall bring suit for such purpose in the name of the State of Texas in Travis County, and the District or County Attorney or any county wherein such person, firm, association, partnership, corporation, designer, consultant or planner engages in such business or conducts such business in violation of this Act is hereby authorized to maintain in the proper Court of said county a suit in the name of the State of Texas to enjoin and prevent such individuals, whether corporation or others, from unlawfully pursuing such occupation. In all such cases it shall not be necessary for the Attorney bringing suit to verify the pleadings or for the State to execute any bond as a condition precedent to the issuing of any injunction or restraining order hereunder.

B. Any license issued under this Act may be revoked by the Board upon a finding by the Board that the holder of such license has been convicted of violating any of the laws of the United States or this State involving moral turpitude or is guilty of violating any of the provisions of

this Act; provided however, the holder of such license shall be entitled to notice, and such notice shall contain a statement which will accurately apprise such license holder of that of which he is accused and shall set the time for hearing not sooner than thirty (30) days after the date of mailing of such notice, and such license holder shall be entitled to be present at the hearing and represented by an attorney. All notices under this section shall be mailed to the last known address of the license holder as reflected in the license holder's file by certified or registered mail.

APPEAL

SECTION 17.

A. Any person aggrieved by any decision of the Board relating to the issuance, denial, revocation, or refusal to renew a license may, within sixty days after the date of the decision, appeal by filing a petition in the District Court of the county of his residence. Any person aggrieved by any other decision of the Board may, within the sixty days after the date of the decision, appeal by filing a petition in the District Court of Travis County, Texas.

B. Any person affected or aggrieved by any rule or regulation promulgated under this Act may sue in the District Court of Travis County, Texas, for a declaratory judgment as to the validity of the rule or regulation or the validity of its application to him. Process shall be served on the Attorney General and the Chairman of the Board. The provisions of the Uniform Declaratory Judgment Act (Article 2524-1, Vernon's Texas Civil Statutes) apply to the extent they may be made applicable.

SEVERABILITY

SECTION 18. If any word, phrase, clause, sentence or part of this Act shall be held by any Court of competent jurisdiction to be invalid or unconstitutional, or for other reasons void or unconstitutional, it shall not affect any other word, phrase, clause, sentence or part of this Act, it being

the express intention of the Legislature to enact such Act without respect to such action or part so held to be invalid, and such remaining portion shall remain in full force and effect.

REPEAL OF CONFLICTING LEGISLATION WITH PROVISIO

SECTION 19. All laws or parts of laws in conflict with the provisions of this Act shall be, and the same are, hereby repealed, provided, however, that this Act shall not be construed as repealing or amending any laws affecting or regulating any other profession.

EMERGENCY CLAUSE

SECTION 20. The fact that the public health and welfare may be endangered by incompetent persons connecting into or onto a potable water supply, and by such reason may contaminate the drinking water of the citizens of this State creates a grave emergency and an imperative public necessity that the constitutional rule prohibiting the final passage of a bill during the first 60 days of a regular legislative session and that the constitutional rule regarding bills to be read on three several days in each House be suspended, and said rules are hereby suspended and that this Act be effective from and after the date of its passage and it is so enacted.

By Trager

A BILL TO BE ENTITLED

An Act creating the Texas State Board of Landscape Irrigation; defining the terms landscape irrigation system, component parts, landscape irrigator, and location, installation of underground sprinkler systems and/or landscape irrigation systems; Board; providing for exemption for certain persons in professions or other types of endeavor; creating a Board consisting of six members who shall be citizens of the United States and residents of Texas; prescribing qualifications for membership on the Board; providing method of appointment and prescribing term of office; defining a quorum of said Board; providing for and prescribing oath of office; prescribing powers and duties of the Board; authorizing the Board to adopt rules and regulations; providing for compensation and travel allowance; providing that no expense of administration of the Act shall ever be charged against the general fund of the State of Texas; prescribing qualifications for licensees; providing for examination and prescribing fees; prescribing for licenses and method of revocation and reissuance; providing for a grandfather clause; providing for notification to local boards of health; providing for a criminal penalty for one in violation of this Act to be fined the sum of \$100.00 and further providing that each day said violation continues shall be deemed a separate offense in violation of this Act; providing for an injunction in addition to the criminal penalty, enjoining anyone in violation of the Act; providing that cities and towns may prescribe rules and regulations; prescribing for appeal from Board Order; providing a saving and severability clause; repealing laws in conflict with a proviso; and declaring an emergency.

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READ 1ST TIME
AND REFERRED TO COMMITTEE ON
Public Health

Dorothy Hallman
Chief Clerk, House of Representatives